

New Jersey Expands Protections for Pregnant Employees

New Law Requires Accommodation Regardless if “Disabled”

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New Jersey has joined a growing trend among states to provide more protections to pregnant employees. Under legislation adopted earlier this year, New Jersey employers, including public sector employers, are required to provide employees who are pregnant or who are new mothers with specific protections.

The new law is an amendment to the New Jersey Law Against Discrimination (NJLAD) that expressly adds “pregnancy” as a protected category against whom employers may not discriminate. However, the bigger impact is the law’s specific reasonable accommodations that employers must now provide to a female employee who “the employer knows, or should know, is affected by pregnancy,” or who has recently given birth. These accommodations are required regardless if the employee is “disabled” and regardless if they are necessary for the employee to perform the essential functions of her job.

The inclusion of “pregnancy” within the NJLAD’s list of protected categories is not startling. Whether under federal or state law, employers already had a duty not to discriminate against pregnant employees, under a variety of legal theories. This new law confirms that pregnant employees are protected, and employers must not discriminate against them. It also provides the same anti-discrimination protections to employees who are recovering from childbirth.

Yet, the new law goes much further than just adding pregnancy and new mothers to the list of protected categories. This law specifically lists the types of accommodations that employers must consider for female employees it knows, or should know, are pregnant, or are recovering from childbirth. Examples of the accommodations

that must be considered are bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual tasks, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work. Critically, all that is required is a request for an accommodation based on “needs related to the pregnancy” and, once the request is made based on the advice of a physician, the employer in most cases must provide the requested accommodations.

With a physician’s note, the only way an employer can avoid having to provide the accommodations is if the employer can show that the accommodations would impose an “undue hardship” on its business operations. This is typically a very high burden under the law, and is not easy for employers to meet. Some factors to consider in this “undue burden” analysis are: the overall size of the business; the size of the budget; the nature and costs of the accommodation; and the extent to which the accommodation would involve waiving essential requirements of a job as opposed to a tangential or non-business necessity requirement.

This new law goes beyond protections extended to disabled employees. In the context of disability laws, such as the NJLAD and the federal Americans with Disabilities Act (ADA), employers must consider providing reasonable accommodations; yet, those accommodations only have to be granted if the employee is still able to perform the essential functions of her job. This new pregnancy law requires accommodations that would make a pregnant employee (or new mother) more comfortable in the workplace or which are otherwise designed to protect the employee’s health, so long as they are requested on the advice of a physician. And, by listing specific accommodations, employers will



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be hard-pressed to argue that the accommodations in the statute are unreasonable, which is typically an argument that can be made with disabled employees.

New Jersey’s new law is part of a growing trend to provide more protections to pregnant employees. California, Maryland, New York City and Philadelphia have recently passed similar legislation aimed at providing comfort based accommodations for pregnant employees. Given this significant change, employers should review their policies on reasonable accommodations and ensure that their Human Resources and other managers are properly trained on the new accommodation requirements created by this new law. Failure to do so could result in significant liability because the law provides employees with a private right action that includes the recovery of a variety of damages, including attorneys’ fees. ♣